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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 09/864,360  
Filing Date: May 23, 2001  
Appellant(s): CLARK ET AL.

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DEREK MEEKER  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed 02/14/08 appealing from the Office action mailed 04/04/07.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

6,298,482	SEIDMAN ET AL	10-2001
6,779,004	ZINTEL	8-2004
6,088,826	TEICH	7-2000

### **(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-5, 7-11, 14, 15, 18-31 and 40 are rejected under 35 U.S.C. 102(e) as being anticipated by **Seidman et al (6,298,482)**.

As to claim 1, note the **Seidman** reference figures 1-6, discloses multimedia broadcast and interactive services, which monitors viewer selection histories and further discloses a network termination unit 'NTU' (Set-top box 'STB' 1), comprising:

A port (Input port 2) operable to receive content signals (col.6, lines 9-25);

A demodulator (4) operable to demodulate the content signals into demodulated content signals (col.6, lines 9-25);

A decoder (6 and 7) operable to decode the demodulate content signals into display signals (col.6, lines 9-25); and

A module (Microcontroller 'MC' 9) operable to monitor services available information, which indicates an availability of services at the network termination unit (STB-1), extract content or services available identifying data, (figs. 4-7, col.5, lines 6-22, lines 44-62 and col.6, lines 1-25) associated with a particular content or service signal of the content or service signals from that particular content or service signal;

Detect use patterns (MC-9) of a user viewing display signals on a viewing device (STB or TV Display), formatting (MC-9) data representative of the use patterns of services available information (menu of choices) into network packets as payload data, setting a network packet header to identify the payload as a use patterns, forming a use

pattern packets, and transmit the use patterns as use pattern packets, detect services available information, the services available information indicating an availability of services at the network termination unit, and transmit the services available information in the use pattern packets (col.6, line 53-col.7, line 55, line 56-col.8, line 45, col.10, lines 1-57), note that academic, entertainment, Internet, VOD, etc., are services available at the STB, generated in the SHR records, and transmitted to the Head end (HE, a content analyzer), which inherently includes a processor or processing unit for receiving SHR pattern packets from the STB-1, via a port, decoding the use pattern packets into data and where a processor analyzes the data to derive viewing information or user profile including services available information (menu of choices) at each STB and customizes content or service to each STB based on these information.

As to claim 3, Seidman further discloses where the NTU comprises a cable modem (col.6, lines 9-25 and col.10, lines 41-57).

Claim 4 is met as previously discussed with respect to claim 1.

Claim 5 is met as previously discussed with respect to claim 1.

Claim 7 is met as previously discussed with respect to claim 1.

As to claim 9, the claimed “a content analyzer, comprising...” is composed of the same structural elements of previously rejected claim 1.

As to claim 10, Seidman further disclose where the content analyzer resides at the distribution hub (col. 45, line 34-col. 46, line 18 and line 43-col. 47, line 1+).

As to claim 11, Seidman further disclose where the content analyzer resides at the Head end (col.6, lines 1-8 and line 53-col.7, line 19).

Claim 14 is met as previously discussed with respect to claim 1.

As to claim 15, the claimed “a method of transmitting use patterns...” is composed of the same structural elements of previously rejected claim 1.

As to claims 18-20, Seidman further tracks video content, programs, advertisements, etc., delivery to ‘NTU’ (col.6, lines 1-8)

Claim 21 is met as previously discussed with respect to claim 1

As to claim 22, the claimed “a network termination unit, comprising...” is composed of the same structural elements of previously rejected claim 1.

Claim 23 is met as previously discussed with respect to claim 1.

Claim 24 is met as previously discussed with respect to claim 3.

Claim 25 is met as previously discussed with respect to claim 1.

As to claim 26, the claimed “a content analyzer, comprising...” is composed of the same structural elements of previously rejected claim 1.

Claim 27 is met as previously discussed with respect to claim 10.

Claim 28 is met as previously discussed with respect to claim 11.

Claim 29 is met as previously discussed with respect to claim 1.

As to claims 30-31, the claimed “an article containing machine-readable code...” is composed of the same structural elements of previously rejected claim 1.

As to claim 40, Seidman further discloses where the content identifying data is a transport stream identifier (col.10, lines 20-40 and line 58-col.11, line 23).

5. Claims 6, 12 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Seidman et al (6,298,482)** as applied to claims 1, 10 and 15 above, and in view of **Zintel (6,779,004)**.

As to claims 6, 12 and 16, Seidman fails to explicitly teach where the use pattern packets are identified as such using a content discovery protocol that uniquely identifies use pattern packets from among other packets.

However, note the **Zintel** reference disclose dynamic connectivity among distributed devices and services, where packets are identified using discovery protocol that uniquely identifies use pattern packets from among other packets (col. 4, lines 56-65, col. 5, lines 49-56, col. 7, lines 17-26 and col. 46, line 33-46).

Therefore it would have been obvious to one of ordinary skill in the art to incorporate the teaching of Zintel into the system of Seidman in order to enable the client or the service provider to automatically find controlled devices and services.

6. Claims 32-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Seidman et al (6,298,482)** as applied to claims 1 and 9 above, and in view of **Teich (6,088,826)**.

As to claims 32-35, Seidman, teaches tracking reception of content signals by the NTU, determine the status of the user's equipment, diagnosing problems and generating a granularity of statistics with or without the user(s) (col.6, line 53-col.7, line 19, col.8, lines 16-34, line 60-col.9, line 16, line 58-col.10, line 6).

Seidman appears to be silent as to determine if data of a particular service that should have been received by the NTU at a point in time was received by the NTU,

verify a delivery of an advertisement to the NTU, where the processor tracks a QoS of services provided to the NTU.

However, note the **Tech** reference figures 1-2, discloses method for checking data for error(s) in data communication systems, where a destination system may check for error(s) in a received frame(s) or packet(s) and if necessary communicate detect error(s) to the source system for retransmission of the frame(s) or packet(s) if necessary (col.2, lines 47-col.3, line 3, line 20-col.5, line 1+), which meets the claimed limitations of "tracking reception of packets, determining if packet should be received at a point in time, verifies the delivery of a particular frames or packets and tracking a QoS of services provided to the NTU.

Therefore it would have been obvious to one of ordinary skill in the art to incorporate the teaching of Teich into the system of Seidman in order to process errors in data communication system or to notify the source, the status of received frames of packets for any necessary error corrections, thereby providing an efficiency system. Furthermore, all the claimed elements are known and could have been combined by known hardware/software methods, which would have given one of ordinary skill the predicted result of efficiently tracking received content and correcting any errors if necessary.

Claims 36-39 are met as previously discussed with respect to claims 32-35.

#### **(10) Response to Argument**

Appellant discusses the claimed invention, the prior art of record and further argues that Seidman et al (6,298,482) the primary prior art of record "does not teach a module operable to transmit the services available information in the use pattern packets", that "does not teach every element of the claims..."(see page 7+ of Appellant's Brief).

In response, Examiner notes Appellant's arguments; however, the Examiner respectfully disagrees. Seidman discloses digital multimedia broadcast and interactive services, keeps track of a user's viewing history and transmits packets of a user's viewing history to a head end. Fig.2A item 19 displays a program menu to the user to notify him of the viewing options which are available (col.6, line 66-col.7, line 5). Seidman further discloses that "...STB receives from...program segments available.....and offers a menu of choices to the user. From these choices, the user selects a set of program segments...." The head end tracks selection of these available programs and generates a viewing history. Seidman further disclose VRS historical reports contain a number of n of SHR's 80 in addition to basic profile information...(col.7, line 56-66), that "...variety of viewing session types to the user, for example, 'academic' viewing, where embedded data is critical 'entertainment'...filtering out by the microcontroller, depending on the viewer's history and interests. The embedded data is offered to the viewer by displaying of a 'hyperlink'...user selects a hyperlink for delivery of a unit of embedded data, selection history record (SHR)...col.8, lines 1-5, lines 23-27) and also VOD services (col.8, line 39-45). All these services, academic, entertainment, Internet, VOD, etc., are services available at the STB,

presented to the user as a menu, and the user's selection or interaction generates the SHR records, which are transmitted to the head end (content analyzer) via a port at the STB and also at the head end. The head end processor presents a menu of available services to the STB, tracks availability of services at each STB and customizes various content or services to users of the STB. The head end inherently includes a processor or processing unit, which monitors and analyzes the use pattern packets with available services information from each STB to customizes services to the various STB based on the received use pattern information and user interest data, which includes service available information. Furthermore the use pattern packets and user interest data generated at each STB includes network packet header, and these packets are periodically transmitted to the HE, or transmitted to the HE based on instructions sent to the STB from the HE, where the HE identifies the payload of the packets and customizes and delivers to each STB, various services or content based on the received information within the packets (col.6, line 53-col.7, line 55, line 56-col.8, line 11, line 60-col.9, line 16). Hence the rejection is proper, meets all the claim limitations and should be sustained.

With respect the 103(a) rejection of claims 6, 12 and 16, Seidman discloses identifying use pattern packets from among other packets, but silent to using a content discovery protocol to uniquely identify packets from among other packets. However, this deficiency is disclosed in **Zintel** reference, which discloses the use of discovery protocol to uniquely identify packets from among other packets (col. 4, lines 56-65, col. 5, lines

49-56, col. 7, lines 17-26 and col. 46, line 33-46). Hence the rejection is proper, meets all the claim limitations and should be sustained.

With respect the 103(a) rejection of claims 32-39 Seidman teaches tracking reception of content signals by the NTU, determine the status of the user's equipment, diagnosing problems and generating a granularity of statistics with or without the user(s) (col.6, line 53-col.7, line 19, col.8, lines 16-34, line 60-col.9, line 16, line 58-col.10, line 6). Seidman appears to be silent as to determine if data of a particular service that should have been received by the NTU at a point in time was received by the NTU, verify a delivery of an advertisement to the NTU, where the processor tracks a QoS of services provided to the NTU. However, note the **Tech** reference figures 1-2, discloses method for checking data for error(s) in data communication systems, where a destination system may check for error(s) in a received frame(s) or packet(s) and if necessary communicate detect error(s) to the source system for retransmission of the frame(s) or packet(s) if necessary (col.2, lines 47-col.3, line 3, line 20-col.5, line 1+), which meets the claimed limitations of "tracking reception of packets, determining if packet should be received at a point in time, verifies the delivery of a particular frames or packets and tracking a QoS of services provided to the NTU. Furthermore, all the claimed elements are known and could have been combined by known hardware/software methods, which would have given one of ordinary skill the predicted result of efficiently tracking received content and correcting any errors if necessary. Hence the rejection is proper, meets all the claim limitations and should be sustained.

**(11) Related Proceeding(s) Appendix**

None

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

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